FCC 96-216

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Section 257 Proceeding to	)	
Identify and Eliminate	)	**GN Docket No. 96-113**
Market Entry Barriers	)	
for Small Businesses	)	

NOTICE OF INQUIRY

Adopted: May 10, 1996 Released: May 21, 1996

Comments Due: July 24, 1996
Reply Comments Due: August 23, 1996

By the Commission:

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I. INTRODUCTION

1. On February 8, 1996, President Clinton signed the Telecommunications Act of 1996 (1996 Telecommunications Act),[1] the most significant communications legislation since passage of the Communications Act of 1934 (Act).[2] Section 101 of the 1996 Telecommunications Act adds new Section 257 to the Act.[3] Section 257 requires the Commission, within 15 months after enactment, to conduct a proceeding "for the purpose of identifying and eliminating, by regulations pursuant to its authority under this Act . . . market entry barriers for entrepreneurs and other small businesses in the provision and ownership of telecommunications services and information services, or in the provision of parts or services to providers of telecommunications services and information services."[4] In implementing Section 257, the Commission must "promote the policies and purposes of this Act favoring diversity of media voices, vigorous economic competition, technological advancement, and promotion of the public interest, convenience and necessity."[5] Every three years following the completion of the market barriers proceeding, the Commission must report to Congress on regulations that have been issued to eliminate barriers and any statutory barriers that the Commission recommends be eliminated.[6]

1 Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

2 47 U.S.C. § 151 et seq.

3 47 U.S.C. § 257.

4 47 U.S.C. § 257(a).

5 47 U.S.C. § 257(b).

6 47 U.S.C. § 257(c).

2. This Notice of Inquiry (Notice or NOI) commences our omnibus Section 257 proceeding. We also will undertake specific initiatives that further the objective of Section 257 to reduce market entry barriers for small businesses. The record developed in connection with these initiatives also will assist us in achieving our mandate under Section 309(j) of the Act[7] to disseminate licenses for auctionable spectrum-based services to small businesses, rural telephone companies, and businesses owned by women and minorities, as well as in fulfilling our general obligation to serve the public interest.[8]

3. Part II of the Notice explains the basis for this inquiry. Part III requests information regarding the characteristics of small telecommunications businesses and the market entry barriers they encounter, as well as the obstacles that deter individuals from starting small telecommunications businesses. In addition, Part III asks how to define small businesses for the purpose of implementing Section 257. Part III also inquires whether small businesses owned by minorities or women face unique entry barriers. We explore this area because the legislative history of Section 257 suggests that Congress was concerned about the underrepresentation of minority or women-owned small businesses in the telecommunications market and sought to increase competition by diversifying ownership.[9] In addition, Section 309(j) specifically requires that we further opportunities for businesses owned by women and minorities in the provision of spectrum-based services, because a portion of small telecommunications businesses under Section 257 are owned by women and minorities, and because evidence suggests that these entities encounter unique market entry barriers. Part IV

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[7] 47 U.S.C. § 309(j).

[8] See, e.g., 47 U.S.C. § 214 (Commission must certify that public convenience or necessity requires construction or extension of lines); 47 C.F.R. § 303 (Commission must regulate radio as public interest, convenience or necessity requires); 47 U.S.C. § 307(a) (Commission must grant radio licenses that serve the public convenience, interest, or necessity).

[9] The Congressional Record provides:

> [W]hile we should all look forward to the opportunities presented by new, emerging technologies, we cannot disregard the lessons of the past and the hurdles we still face in making certain that everyone in America benefits equally from our country's maiden voyage into cyberspace. I refer to the well-documented fact that minority and women-owned small businesses continue to be extremely under represented in the telecommunications field . . . . Underlying [Section 257] is the obvious fact that diversity of ownership remains a key to the competitiveness of the U.S. communications marketplace.

142 Cong. Rec. H1141 at H1176-77 (daily ed. Feb. 1, 1996) (statement of Rep. Collins).

of the Notice seeks comment on regulatory incentives for eliminating barriers to entry for small telecommunications businesses. It also seeks information on ways to fulfill our mandate under Section 309(j) to further opportunities for businesses owned by minorities and women consistent with relevant constitutional standards.

II. BACKGROUND

A. Basis for Inquiry

4. The primary purpose of this inquiry is to fulfill our mandate under Section 257 to identify and eliminate market entry barriers for small businesses in the provision and ownership of telecommunications and information services, and in the provision of parts or services to providers of telecommunications services and information services.[10] We interpret "market entry barriers" to include obstacles that deter individuals from forming small businesses, barriers that impede entry into the telecommunications market by existing small businesses, and obstacles that small telecommunications businesses face in providing service or expanding within the telecommunications industry, e.g., those that inhibit a paging company from expanding into a new geographic area or new service such as cellular.

5. The legislative history of Section 257 essentially parallels the language of the enacted provision. The Conference Report states: "The conference agreement adopts the House provisions with minor modifications as a new Section 257 of the Communications Act."[11] There was no provision in the Senate bill and the House amendment stated: "Section 250 [now Section 257] requires the Commission to adopt rules that identify and eliminate market entry barriers for entrepreneurs and small businesses in the provision and ownership of telecommunications and information services. The Commission must review these rules and report to Congress every three years on how it might prescribe or eliminate rules to promote the purposes of this section."[12]

6. Small businesses play a significant role in the U.S. economy. According to the

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[10] 47 U.S.C. § 257(a).

[11] 142 Cong. Rec. H1078-03, H1113-14, Joint Explanatory Statement of the Committee of Conference at 23.

[12] 142 Cong. Rec. H1078-03 at H1113. In debates preceding passage of the 1996 Telecommunications Act, two members of Congress expressed the view that Section 257 would cover conduct including that precluded by new Section 222(e), 47 U.S.C. § 222(e), which prohibits local telephone service providers from charging discriminatory or unreasonable rates, or setting discriminatory or unreasonable terms or conditions, in selling subscriber lists to independent directory publishers. 142 Cong. Rec. H1145-06 at H1160 (daily ed. Feb. 1, 1996) (statement of Rep. Barton); 142 Cong. Rec. E184-03 (daily ed. Feb. 6, 1996) (extension of remarks by Rep. Paxon)

U.S. Small Business Administration (SBA), in 1992 (the last year for which information is available), small businesses constituted the vast majority of all employers, employed 53% of the private work force, and provided 50% of all receipts.[13] Research also has shown that small firms innovate at a per person rate twice that of large firms, spend more money on research and development (R&D), and more efficiently convert R&D efforts to new products than large firms.[14] Furthermore, small businesses are able to serve narrower niche markets that may not be easily or profitably served by large corporations, especially as large telecommunications expand globally.[15] Despite the role of small businesses in the economy, and the growth of the telecommunications market,[16] small businesses currently constitute only a small portion of telecommunications companies.[17]

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[13] U.S. Small Business Administration, SBA Small Business Answer Card, 1995. In this context, the SBA considered small businesses as those employing under 500 employees.

[14] "Report of the FCC Small Business Advisory Committee to the Federal Communications Commission Regarding Gen Docket 90-314," reprinted at 8 FCC Rcd 7820, 7828 (1993) (SBAC PCS Report) (citing Joint Petition for Further Rulemaking of Advanced Mobilecomm Technologies, Inc. and Digital Spread Spectrum Technologies, Inc., in Gen. Docket 90-314, Exhibit # 3, at 12-13). See infra ¶¶ 8-9 (discussion of the Commission's Small Business Advisory Committee).

[15] Interim Report of the Federal Communications Small Business Advisory Committee (April 21, 1994 ed.) at 14-15 (SBAC Interim Report) (citing "Communications and Minority Enterprise," Report of the 1990 FCC-NTIA Conference (1990) at 11-12).

[16] For example, according to Edge Media, worldwide revenues for Personal Communications Services (PCS) could grow to $31 billion for equipment and services by the year 2000, The Telecommunications Industry A Market Opportunity Analysis, Federal Communications Commission, Office of Communications Business Opportunities (June 1995) (1995 OCBO Analysis) at 17 & n.30 (citing 1995 Telecommunications Market Review and Forecast, North American Telecommunications Association), and PCS is expected to have 13.5 million subscribers by the year 2000, id. at 1. The cellular market itself is growing rapidly: subscribership increased from approximately 5 million in 1990 to over 24 million in 1994. Id. The cable industry generated nearly $23 billion in 1994 and revenues will likely continue to climb, given that over 65% of all households with television sets subscribe to cable for video programming and over 95% of the country is wired for cable. Id. at 3.

[17] For example, the SBAC noted that SBA sales and employment data for the period 1989-1991 indicated that while the total number of small telecommunications enterprises had increased, cumulative market share possessed by those businesses decreased significantly. SBAC PCS Report, 8 FCC Rcd at 7826. Stated differently, bigger businesses were commanding larger portions of telecommunications revenues. Of a total of 990 firms in Standard Industrial Code 4812 (radiotelephone industries) in 1989, 971 firms with 249

(continued...)

B. Small Business Initiatives

7. The FCC has undertaken several initiatives to increase opportunities for entry and expansion by small businesses in telecommunications markets.[18]

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[17](...continued)
employees or less possessed a 35.1% cumulative market share in 1991, compared to 927 firms in the same employment size range with a cumulative market share of 52.5% in 1989. Id. In contrast, there were a total of 19 firms with over 249 employees commanding a 64.9% cumulative market share in 1991, compared to 21 firms of the same size range with a cumulative market share of 47.5% in 1989. Id. See also FCC, "Telecommunications Industry Revenue: TRS Fund Worksheet Data" (February 1996) at Table 21 (of all 1,347 local exchange carriers (LEC) filing FCC Form 431 Telecommunications Relay Service (TRS) Fund Worksheets, the top fifth represent 98% of all LEC revenues; of all 97 interexchange carriers (IXC) filing TRS Fund Worksheets, the top fifth represent 99% of all IXC revenues); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5578 (1994) (Competitive Bidding Fifth Report and Order) (comments of DCR Communications asserting that ten large companies -- the six RBOCs, AirTouch (formerly owned by Pacific Telesis), McCaw (now owned by AT&T), GTE and Sprint -- control nearly 86 percent of the cellular industry, and that nine of these ten companies control 95% of the cellular population and licenses in the 50 BTAs that have one million or more people).

[18] Although not specifically designed for small businesses, the Commission has adopted a number of initiatives generally to foster new entry and ownership opportunities in mass media and telecommunications services. See, e.g., Policies and Rules Regarding Minority and Female Ownership of Mass Media Facilities, Notice of Proposed Rulemaking, 10 FCC Rcd 2788 (1995) (Minority/Female Mass Media Ownership NPRM) (proposing initiatives to increase minority and female ownership of mass media facilities); Expanded Interconnection with Local Telephone Company Facilities, Second Report and Order and Third Notice of Proposed Rulemaking, 8 FCC Rcd 7374 (1993) (requiring larger LECs to provide expanded interconnection for switched transport service to competitive access providers), vacated in part and remanded in part sub nom. Bell Atlantic Telephone Cos. v. FCC, No. 93-1743 (D.C. Cir., April 17, 1995); Expanded Interconnection with Local Telephone Company Facilities, Report and Order and Notice of Proposed Rulemaking, 7 FCC Rcd 7369 (1992) (requiring larger LECs to provide expanded interconnection for special access to competitive access providers), rev'd sub nom. Bell Atlantic Telephone Cos. v. FCC, 24 F.3d 1441 (D.C. Cir. 1994) (reversing physical collocation requirement), recon., 8 FCC Rcd 127 (1993), recon., 8 FCC Rcd 7341 (1993); Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Notice of Proposed Rulemaking, 7 FCC Rcd 1542 (1992) (proposing spectrum for new and innovative mobile communications services); Amendment of the Commission's Rules to Establish New Personal Communications Services,
(continued...)

8. Small Business Advisory Committee. In 1992, the Commission chartered the Small Business Advisory Committee (SBAC) to provide guidance regarding small and minority-owned telecommunications businesses by reviewing the agency's rules and policies, recommending changes designed to promote opportunities for these entities in the telecommunications sector, and reporting to the Commission on its findings. The SBAC also is charged with reviewing and analyzing the implications of proposed FCC actions in various areas and formulating recommendations to facilitate small and minority business opportunities.

9. The SBAC's interim report, submitted on April 21, 1994, concluded that the ready availability of credit to small businesses had generally declined in recent years.[19] Among the factors cited by the SBAC contributing to the lack of credit were unfavorable loan quality perceptions, a bias against small loan amounts, and the inability to collaterize FCC licenses.[20]

10. Spectrum Auction Incentives. Section 257 embodies Congress' intent to facilitate opportunities for small businesses in telecommunications. This intent is also reflected in Section 309(j) of the Act,[21] incorporated in the Omnibus Budget Reconciliation Act of 1993,[22] which authorized the FCC to conduct spectrum auctions. In enacting Section 309(j), Congress found that "unless the Commission is sensitive to the need to maintain opportunities for small businesses, competitive bidding could result in a significant increase in concentration in the telecommunications industries"[23] and that small businesses should "continue to have opportunities to become licensees."[24] To this end, Section 309(j) requires the Commission to establish competitive bidding rules and other provisions to ensure that small businesses, businesses owned by minorities or women, and rural telephone companies

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[18](...continued)
Policy Statement and Order, 6 FCC Rcd 6601 (1991) (adopting policies regarding new personal communications services).

[19] SBAC Interim Report at 45. Congress expressed a similar concern in adopting the Small Business Credit and Business Opportunity Enhancement Act of 1992, Pub. L. No. 102-366, § 331(a)(3), 106 Stat. 986 (1992) (1992 Small Business Act) ("small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit").

[20] SBAC Interim Report at 45.

[21] 47 U.S.C. § 309(j).

[22] Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 312, 388 (1993).

[23] H.R. Rep. No. 111, 103rd Cong., 1st Sess. 254 (1993).

[24] Id. at 255.

("designated entities") have an opportunity to participate in the growing wireless communications industry.

11. Specifically, Section 309(j)(3)(B) requires that in designing systems of competitive bidding, the Commission "promot[e] economic opportunity and competition . . . by disseminating licenses among a wide variety of applicants, including small businesses . . . and businesses owned by members of minority groups and women."[25] In addition, Section 309(j)(4)(C)(ii) requires that in prescribing area designations and bandwidth assignments, the Commission promote "economic opportunity for a wide variety of applicants, including small businesses . . . and businesses owned by members of minority groups and women."[26] Section 309(j)(4)(D) requires that in prescribing regulations, the Commission "ensure that small businesses . . . and businesses owned by members of minority groups and women are given the opportunity to participate in the provision of spectrum-based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures."[27]

12. In establishing Section 309(j) competitive bidding rules for small businesses and other entities, the Commission determined that:

> The record clearly demonstrates that the primary impediment to participation by designated entities is lack of access to capital. This impediment arises for small businesses from the higher costs they face in raising capital and for businesses owned by minorities and women from lending discrimination as well. In this regard, it should be noted that although auctions have many beneficial aspects, they threaten to erect another barrier to participation by small businesses and businesses owned by minorities and women by raising the cost of entry into spectrum-based services.[28]

13. The Commission has taken a flexible approach in establishing size standards for qualifying as small businesses in each spectrum-based service, and in certain instances, has established bidding incentives based on business size. When the Commission issued its first general auction rules under Section 309(j), it adopted the SBA's definition of small business:

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[25] 47 U.S.C. § 309(j)(3)(B).

[26] 47 U.S.C. § 309(j)(4)(C)(ii).

[27] Id. § 309(j)(4)(D). Subsequently, Congress eliminated the Commission's minority tax certificate program. Self-Employed Health Insurance Act of 1995, Pub. L. No. 104-7, § 2, 109 Stat. 93 (1995).

[28] Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5535.

to qualify an applicant had to show that, together with its affiliates, it had no more than $6 million net worth, and after federal income taxes (excluding any carry over losses) it did not have in excess of $2 million in annual profits for each of the previous two years.[29] The Commission reasoned that in most circumstances the SBA's existing net worth/income size standard would be the appropriate threshold for small businesses to qualify for auction incentives. The Commission recognized, however, that in certain services the SBA standard might not be high enough to encompass parties that needed special incentives to raise the capital to compete in spectrum auctions, but also were financially capable of constructing and operating systems. To accommodate this situation, therefore, on reconsideration the Commission adopted a more flexible approach, allowing the threshold to be adjusted on a service-by-service basis.[30]

14. For example, the Commission adopted the SBA's $6 million/$2 million definition for the Interactive Video Data Service (IVDS).[31] The Commission adopted a $40 million small business definition for both narrowband and broadband PCS,[32] and the Multipoint Distribution Service (MDS).[33] Under the $40 million threshold, to qualify for the special measures accorded a small business, the applicant -- together with its affiliates (and for PCS its attributable investors as well) -- must not have in excess of $40 million in gross

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[29] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second Report and Order, 9 FCC Rcd 2348, 2395-2396 (1994) (Competitive Bidding Second Report and Order).

[30] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Second Memorandum Opinion and Order, 9 FCC Rcd 7245, 7269 (1994).

[31] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Fourth Report and Order, 9 FCC Rcd 2330, 2336 (1994) (Competitive Bidding Fourth Report and Order); Competitive Bidding Second Report and Order, 9 FCC Rcd at 2395-2396. In the IVDS MSA auction completed July 29, 1994, small businesses won 25.4% (151) of the 594 available licenses. "Visitor's Auction Guide, FCC Auction, Broadband Personal Communications Services" (December 5 1994) (1994 FCC Visitor's Auction Guide) at Section IX.

[32] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 175, 196 (1995) (Competitive Bidding Third MO&O/FNPRM); Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5581-5584.

[33] Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service, Report and Order, 10 FCC Rcd 9589 9671-72 (1995) (Multipoint Distribution Service Report and Order).

revenues for the three preceding years.[34] For the 900 MHz Specialized Mobile Radio (SMR) Service and the 800 MHz SMR Service, the Commission has adopted a two-tiered approach to the definition of small business: "small" businesses (the applicant, together with attributable investors and affiliates, has average gross revenues for the three preceding years are $15 million or less) and "very small" businesses (the applicant, including attributable investors and affiliates, must have average gross revenues for the three preceding years of $3 million or less).[35]

15. The Commission has designed particular incentives to enhance small business participation in the competitive bidding process for these spectrum-based services. One of these measures is the establishment of "entrepreneurs blocks" in the broadband PCS auctions, in which the Commission limits participants to applicants with $125 million or less in annual gross revenues for the previous two years and total assets of $500 million or less.[36] The Commission reasoned that these restrictions would have the effect of excluding larger companies that could easily outbid designated entities and thus frustrate Congress' goal of disseminating licenses among a diversity of licensees, while at the same time including firms that are likely to have the financial ability to provide sustained competition to other PCS licensees.[37]

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[34] See Competitive Bidding Third MO&O/FNPRM, 10 FCC Rcd at 196; Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5608; Multipoint Distribution Service Report and Order, 10 FCC Rcd at 9671-72.

[35] Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Bands Allotted to the Specialized Mobile Radio Pool, Second Order on Reconsideration and Seventh Report and Order, 11 FCC Rcd 2639, 2075-77 (1996) (900 MHz Seventh Report and Order); Implementation of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463, 1574 (1996) (800 MHz Eighth Report and Order).

[36] Competitive Bidding Fifth Report and Order 9 FCC Rcd at 5586.

[37] Id.

16. Additional incentives to facilitate small business participation in spectrum auctions include reduced upfront payments,[38] bidding credits,[39] installment payment plans with favorable interest rates,[40] and reduced down payments on winning bids.[41] In adopting

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[38] See, e.g., Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5599-5600 (25% reduction for all broadband PCS C block bidders); Multipoint Distribution Service Order, 10 FCC Rcd at 9668 (25% reduction in required upfront payment).

[39] See, e.g., Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Sixth Report and Order, 11 FCC Rcd 136, 161 (1996) (Competitive Bidding Sixth Report and Order) (25% bidding credit for small businesses in broadband PCS C block auction); Multipoint Distribution Service Order, 10 FCC Rcd at 9669 (15% bidding credit); 900 MHz Seventh Report and Order, 11 FCC Rcd 2705-06 (15% bidding credit for very small businesses and 10% bidding credit for small businesses).

[40] See, e.g., Competitive Bidding Fourth Report and Order, 9 FCC Rcd at 2340 (for the IVDS MSA auction, after 20% downpayment on net winning bids, small businesses allowed to pay the remaining 80% in installments over the five-year term of the license, with interest-only payments for the first two years, principal and interest amortized over the remaining years of the license, and interest charges fixed at a rate equal to that for five-year U.S. Treasury notes); Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Third Report & Order, 9 FCC Rcd 2941, 2978-79 (1994) (in regional narrowband PCS auction, small businesses permitted to pay full amount of the bid (less upfront and down payments) in installments, with interest-only payment for the first two years, principal and interest amortized over the remaining years of the license term, and interest charges fixed at the rate for ten-year U.S. Treasury obligations); Competitive Bidding Sixth Report and Order, 11 FCC Rcd at 158 (in broadband PCS C block auction, small businesses permitted to make interest-only payments for six years and payment of interest and principal amortized over the remaining four years of the license term, with interest charged at the ten-year U.S. Treasury obligations rate); Multipoint Distribution Service Order, 10 FCC Rcd at 9667 (winning bids (less upfront and down payments) payable in installments, with interest-only payments for first two years and principal and interest amortized over the remaining years of the license term, and interest charged at the ten-year U.S. Treasury note rate plus 2.5%); 900 MHz Seventh Report and Order, 11 FCC Rcd at 2708 (for very small businesses, payment quarterly over license term, with interest-only payments for the first five years, and interest accruing at the rate for 10-year U.S. Treasury obligations; for small businesses, payment quarterly over license term, interest-only payments for first two years, and interest charged at the rate for 10-year U.S. Treasury obligations plus 2.5%); 800 MHz Eighth Report and Order, 11 FCC Rcd at 1574 (same as in 900 MHz SMR for upper 10 MHz block).

[41] See, e.g., Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5593 (for Broadband PCS C block auction, 5% of winning bid due within 5 business days of close of auction, and remaining 5% due within 5 days of grant of the application); Multipoint

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incentives for designated entities as required by Section 309(j),[42] the Commission also established incentives for businesses owned by minorities and women.[43] We stated that we would decide whether and how to use these incentives on a service-by-service basis.[44] For example, in the regional narrowband PCS auction completed November 8, 1994, a 40% bidding credit was available for minority and women-owned businesses for two of the six licenses in each regional market (five regions).[45] In the broadband PCS proceeding, we initially established various incentives for businesses owned by minorities or women for the entrepreneurs blocks (C and F).[46] After the Supreme Court's decision in Adarand Constructors, Inc. v. Peña,[47] which held that racial classifications are subject to strict scrutiny, however, we revised the designated entity rules to remove race and gender-based incentives in the broadband C block auction.[48] The majority of commenters in this

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[41](...continued)
Distribution Service Order, 10 FCC Rcd at 9701 (10% of winning bid due 5 days after notification of winning bid, and remaining 10% due 5 days after public notice that license is ready for issuance); 900 MHz Seventh Report and Order, 11 FCC Rcd at 2708 (5% of winning bid due five days after close of auction, with remaining 5% due five days after announcement that license is ready for grant).

[42] 47 U.S.C. § 309(j).

[43] Competitive Bidding Second Report and Order, 9 FCC Rcd at 2388-2400.

[44] Id. at 2388-89.

[45] Competitive Bidding Third MO&O/FNPRM, 10 FCC Rcd at 201.

[46] Competitive Bidding Fifth Report and Order, 9 FCC Rcd at 5571-97.

[47] 115 S.Ct. 2097 (1995).

[48] Competitive Bidding Sixth Report and Order at ¶¶ 10-57. See also infra ¶¶ 44-55 (discussion of Adarand). In a Notice of Proposed Rulemaking proposing rules for the broadband PCS D, E & F block auctions, we tentatively concluded that our present record in support of race-based rules is insufficient to demonstrate a compelling interest under the strict scrutiny standard to support race-based provisions of the F block because it reflects generalized assertions of discrimination and that the present record in support of our gender-based F block rules may be insufficient to satisfy intermediate scrutiny. Amendment of Part 20 and 24 of the Commission's Rules -- Broadband PCS Competitive Bidding and the Commercial Radio Service Spectrum Cap, Notice of Proposed Rulemaking, WT Docket No. 96-59, GN Docket No. 90-314 (released March 20, 1996) at ¶¶ 20-23 (D, E & F Block NPRM). We requested comment on this tentative conclusion, requested parties to submit statistical and personal evidence of discrimination, and sought comment on nonremedial
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proceeding favored the rule changes to avoid delay and the risk of legal challenges to the auction.[49] We generally extended the pre-Adarand incentives for minority and women-owned small businesses to all small businesses. We found that because many designated entities, including minority and women-owned businesses, would qualify as small businesses and, thus, benefit from the changes, they were consistent with our Section 309(j) mandate.[50] Although the Commission determined that the revisions were necessary under the circumstances, we also recognized that race and gender-based incentives may be sustainable with further development of the record.[51]

17. Telecommunications Development Fund. In Section 707 of the 1996 Telecommunications Act,[52] Congress established the Telecommunications Development Fund (the Fund) to promote access to capital for small businesses in the telecommunications industry, stimulate the development of new technology, and support delivery of universal service.[53] The Fund, a non-profit corporation, is authorized to make loans to, investments in, or other extensions of credit to small businesses, provide financial advice to small businesses, and conduct research.[54] Fund accounts will consist of interest on deposits made to qualify for competitive bidding under Section 309(j) of the Act, funds appropriated to the Commission for advances to the Fund, donations, and repayment of credit extended by the Fund.[55] Section 707 authorizes establishment of a seven-member Board of Directors (selected by the FCC Chairman), consisting of four representatives from the private sector, and one each from the Commission, the SBA, and the Department of the Treasury.[56] An Interim Chairperson

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[48](...continued)
objectives that could be furthered by minority-based provisions of our F block rules. Id. at ¶ 21. The record developed in the D, E & F Block NPRM will be incorporated into the record in this proceeding. Id. at ¶ 24.

[49] Competitive Bidding Sixth Report and Order, 11 FCC Rcd at 142-43.

[50] Id. at 143.

[51] Id. at 136-37

[52] Pub. L. No. 104-104, § 707, 110 Stat. 56 47 U.S.C. § 614.

[53] 47 U.S.C. § 614(a).

[54] 47 U.S.C. § 614(e).

[55] 47 U.S.C. § 309(j)(8)(C).

[56] 47 U.S.C. § 614(c)(1).

has been selected and formation of the Board is underway.[57]

C. Related Initiatives

18. The Commission has adopted other polices and rules regarding participation by women and minorities in the telecommunications industry. As described below, these rules generally serve to increase diversity of viewpoints, deter discrimination, and facilitate ownership in communications. Thus, these policies inure to the benefit of small businesses owned by women or minorities, and to individual women or minorities in the telecommunications market.[58]

19. Following the D.C. Circuit decision in TV 9, Inc. v. FCC,[59] the Commission adopted a broadcast licensing policy in which the Commission considers a minority applicant's proposed participation in station operation as one of several factors in comparing applicants for mutually exclusive broadcast licenses.[60] In 1978, the Commission adopted the

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[57] FCC, "Chairman Hundt Announces Appointment of Solomon Trujillo as Interim Chairman of the Telecommunications Development Fund." Public Notice (March 8, 1996).

[58] For example, in adopting equal employment opportunity rules for commercial mobile radio services, the Commission found that "EEO rules for CMRS providers are appropriate and necessary to achieve the statutory goal of increased ownership opportunities for minorities and women in spectrum-based services. . . . EEO rules . . . will provide increased communications experience for minorities and women. This experience, will, in turn, enable them more easily to become owners of communications enterprises." Implementation of Section 3(n) and 332 of the Communications Act, Third Report and Order, 9 FCC Rcd 7988, 8097-98 (1994) (CMRS Third Report and Order)

[59] TV 9 Inc., 495 F.2d 929 (D.C. Cir. 1973), cert. denied, 419 U.S. 986 (1974). In TV 9, the court held that "when minority ownership is likely to increase diversity of content, especially on opinion and viewpoint, merit should be awarded" and found that "it is upon ownership that public policy places primary reliance with respect to diversification of content, and that historically has proved to be significantly influential with respect to editorial comment and presentation of news." Id. at 937-38.

[60] In Metro Broadcasting, Inc. v. FCC, 497 U.S. 547, 567 (1990), the Supreme Court upheld our minority policy, however, in Lamprecht v. FCC, 958 F.2d 395, 398 (D.C. Cir. 1992), the D.C. Circuit found the policy for women to be unconstitutional. Thereafter, in Bechtel v. FCC, 10 F.3d 875, 877, 887 (D.C. Cir. 1993), the D.C. Circuit held that the integration credit, upon which the minority/female policy is based, was arbitrary and capricious. Following Bechtel, the Commission suspended comparative hearings altogether. The Commission, however, has sought public comment on the nexus between female ownership and diversity of programming. Policies and Rules Regarding Minority and Female

(continued...)

distress sale program, which permits a broadcast licensee whose license has been designated for a revocation hearing to sell its station to a minority-controlled entity at 75% or less of the station's fair market value; and the tax certificate program, which permitted parties that sell broadcast licenses to minorities to defer capital gains.[61] In 1982, Congress required the Commission to establish incentives, rules and procedures ensuring a "significant preference" for minority-controlled applicants in awarding licensees by lottery.[62] Congress found that "the effects of past inequities stemming from racial and ethnic discrimination have resulted in a severe underrepresentation of minorities in the media of mass communications, as it has adversely affected their participation in other sectors of the economy as well,"[63] and stated its intention to "further diversify the ownership of the media of mass communications."[64]

20. Later, in 1985, we adopted multiple ownership rules for broadcast services, which permitted a nonminority owner to exceed the caps on national ownership in the form of noncontrolling interests in minority-controlled stations and permitted minority owners to exceed the limits outright.[65] In the FCC's appropriations legislation for fiscal year 1988, Congress prohibited the Commission from spending any appropriated funds to examine or

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[60](...continued)
Ownership of Mass Media Facilities, Notice of Proposed Rulemaking, 10 FCC Rcd 2788, 2790 (1995) (Minority/Female Mass Media Ownership NPRM).

[61] Statement of Policy on Minority Ownership of Broadcasting Facilities, 68 FCC 2d 979, 983 (1978). See also Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 92 FCC 2d 849 (1982). As previously discussed, in 1995 Congress repealed the Commission's tax certificate authority. See supra note 27.

[62] 47 U.S.C. § 309(i)(3)(A); 47 C.F.R. § 1.1622.

[63] H.R. Conference Report No. 97-765, 97th Cong., 2d Sess., 1982 at 43.

[64] Id.

[65] Amendment of Section 73.3555 of the Commission's Rules Relating to Multiple Ownership of AM, FM and Television Broadcast Stations, Memorandum Opinion and Order, 100 FCC 2d 74, 94 (1985) (1985 Minority Ownership Memorandum Opinion and Order). In Section 202 of the 1996 Telecommunications Act, Congress removed the national ownership caps for radio stations, and expanded them for television stations. 1996 Telecommunications Act, § 202. As a result, minority ownership incentives are no longer incorporated into the broadcast national multiple ownership rules. The Commission has adopted new rules implementing Section 202. Implementation of Section 202(a) and 202(b)(1) of the Telecommunications Act of 1996 (Broadcast Radio Ownership), Order, FCC 96-90 (released March 8, 1996).

change its minority ownership policies[66] and Congress has enacted similar appropriations measures in subsequent years.[67]

21. In the 1992 Cable Act, Congress required the FCC to prescribe rules establishing "reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person,"[68] and in 1993, the Commission adopted horizontal ownership rules for cable television, increasing the ownership allowance for minority-controlled stations.[69] The Commission also adopted channel occupancy rules for cable television, which include an increased allowance for carriage of channels in which the operator has an attributable interest but that are minority-controlled.[70] To promote diversity of program sources and to ensure public access to a wide variety of viewpoints,[71] Congress also permitted cable operators to use leased access channel capacity "for the provision of programming from a qualified minority program source . . . whether or not such source is affiliated with the cable operator;"[72] and the Commission adopted implementing regulations.[73]

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[66] Continuing Appropriations Act for Fiscal Year 1988, Pub. L. No. 100-202, 101 Stat. 1329-31. In addition, the legislation specifically ordered the Commission to close MM Docket No. 86-484, in which the Commission was examining whether a nexus exists between minority/female ownership and viewpoint diversity and whether such ownership is necessary to achieve that goal. Id.

[67] See, e.g., H.R.J. Res. 108, 104th Cong., 1st Sess., Section 104 (1995).

[68] Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, § 11(c)(2), 106 Stat. 1460 (1992 Cable Act).

[69] Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Second Report and Order, 8 FCC Rcd 8565, 8577 (1993) (Cable Second Report and Order). In response to Daniels Cablevision, Inc. v. U.S., 835 F. Supp. 1 (D.D.C. 1993), appeal docketed and pending, Civ. Act. No. 93-5290 (D.C. Cir. 1993), which held the statute unconstitutional, the Commission stayed its rule in light of the court's ruling.

[70] Cable Second Report and Order, 8 FCC Rcd at 8596.

[71] See S. Rep. No. 102-92, 102d Cong., 1st Sess. (1991) at 30; H.R. Rep. No. 102-628, 102d Cong., 2d Sess. (1992) at 40 ("[n]ew subsection 612(i) is intended to provide cable operators increased incentives to carry minority programming services and is consistent with FCC and Congressional objectives designed to increase the diversity of viewpoints by encouraging minority ownership of the communications media").

[72] 47 U.S.C. § 532(i)(1).

[73] 47 C.F.R. § 76.977

22. In 1994, in the Minority/Female Mass Media Ownership NPRM, the Commission proposed initiatives to increase minority and female ownership of mass media facilities by facilitating their access to capital.[74] Specifically, we proposed an incubator program whereby existing mass media entities would be encouraged, through ownership-based incentives, to assist new entrants to the communications industry, including small businesses. We also sought comment on how to modify ownership attribution rules to encourage investment in minority-controlled and women-controlled broadcast properties by deeming noncontrolling interests in such properties non-attributable.[75] The Minority/Female Mass Media Ownership NPRM also proposed seeking investment tax credit legislation, streamlining application standards for qualified Specialized Small Business Investment Companies, and relaxing local multiple ownership limits for minorities and women.[76] In another 1994 Notice of Proposed Rulemaking proposing new attribution rules regarding treatment of the equity interest of a member in a limited liability company or a registered limited liability partnership, the Commission sought comment on whether to provide an exception to the proposal to facilitate minority ownership of broadcast stations.[77]

23. The Commission's equal employment opportunity (EEO) rules also help to promote opportunities for women and minorities. In 1968, we adopted our first minority EEO rules for broadcast services.[78] In 1970, the Commission added women to the coverage

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[74] Minority/Female Mass Media Ownership NPRM, 10 FCC Rcd at 2788.

[75] Id. at 2791-95.

[76] Id. at 2796-97.

[77] Review of the Commission's Regulations Governing Attribution of Broadcast Interests, 10 FCC Rcd 3606 (1985).

[78] Petition for Rulemaking to Require Broadcast Licensees to Show Nondiscrimination in Their Employment Practices, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC 2d 766 (1968). Earlier this year, the Commission adopted an Order and Notice of Proposed Rulemaking proposing measures to streamline EEO reporting requirements in certain circumstances, while reaffirming its commitment to maintain an effective EEO program. Streamlining Broadcast EEO Rule and Policies, Vacating the EEO Forfeiture Policy Statement and Amending Section 1.80 of the Commission's Rules to Include Forfeiture Guidelines, MM Docket No. 96-16, FCC 96-49 (released February 16, 1996) (1996 EEO Order & NPRM). In that Notice, we reiterated the dual purposes of our EEO rule:

> The Commission's broadcast EEO requirements serve two objectives: to promote programming that reflects the interests of minorities and women in the local community in addition to

(continued...)

of its EEO rules[79] and adopted EEO rules for common carriers.[80] In 1972, we adopted EEO rules for cable,[81] and more recently, for commercial mobile radio services.[82] In 1976, the

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[78](...continued)

> those of the community at large and to deter discriminatory employment practices. A basic rationale underlying the broadcast EEO Rule has been that a broadcaster can more effectively fulfill its duty to serve the needs of the entire community if it makes a good faith effort to employ qualified women and minorities. . . . as more minorities and women are employed in the broadcast industry, varying perspectives are more likely to be aired. The other underlying rationale for the EEO Rule, deterrence of unlawful discrimination, rests on the belief that a broadcaster that engages in unlawful discrimination cannot, by definition, fulfill the needs of the entire community. We also recognize that employment discrimination in the broadcast industry inhibits our efforts to diversify media ownership by impeding opportunities for minorities and women to learn the operating and management skills necessary to become media owners and entrepreneurs.

Id. at ¶ 3 (citations omitted).

The Commission sought comment on its view that because the EEO program is an efforts-based approach that does not mandate that broadcasters employ any person on the basis of race, it is not implicated by Adarand and need not be evaluated under the strict scrutiny standard. Id. at ¶ 15. See infra ¶¶ 44-55 (discussion of Adarand).

[79] Petition For Rulemaking To Require Broadcast Licensees To Show Nondiscrimination in Their Employment Practices, 23 FCC 2d 430 (1970); Amendment of Part VI of FCC Forms 301, 303, 309, 311, 314, 315, 340 and 342, and Adding The Equal Employment Program Filing Requirement To Commission Rules 73.125, 73.301, 73.599, 73.680 and 73.793, 32 FCC 2d 708 (1971).

[80] Rulemaking to Require Communications Common Carriers to Show Nondiscrimination in Their Employment Practices, 24 FCC 2d 725 (1970).

[81] Amendment of the Commission's Rules to Require Operators of Community Antenna Television Systems and Community Antenna Relay Station Licensees to Show Nondiscrimination in Their Employment Practices, Report and Order, 34 FCC 2d 186 (1972), modified, Nondiscrimination in the Employment Policies and Practices of Cable Television Applicants and Certificated Holders and Licensees of Cable Television Relay Stations, Report and Order, 69 FCC 2d 1324 (1978).

Supreme Court indirectly endorsed our EEO rules.[83] In the "Cable Communications Policy Act of 1984," Congress prohibited cable entities from discriminating on the basis of race, gender, and other protected member status, and required the Commission to annually review cable systems' EEO programs and certify systems' compliance with the Commission's EEO rules.[84] Congress found that EEO requirements were "particularly important in the mass media area where employment is a critical means of assuring that program service will be responsive to a public consisting of a diverse array of population groups," and that a strong EEO policy is necessary to assure that there are sufficient numbers of minorities and women with professional and management experience who will be able to take advantage of ownership opportunities.[85] Again in 1992, Congress found that minorities and women were not sufficiently represented in managerial positions in broadcast and cable, and that increasing their representation would further the nation's policy favoring diversity in the expression of views in the electronic media.[86] Congress directed the Commission to bolster broadcast EEO enforcement by conducting midterm review of broadcast television stations, endorsed our EEO rule and forms for television licensees by prohibiting the Commission from amending them, and extended its EEO statutory requirements to cover multichannel video programming distributors.[87]

III. IDENTIFYING MARKET ENTRY BARRIERS

A. General Market Entry Barriers

24. In this section, we first request commenters to provide profile data about small telecommunications businesses, including financing sources and terms, services provided, markets served, geographic areas of operation, and employee workforce. This information will assist us in identifying market entry barriers and designing appropriate measures to eliminate entry barriers. Commenters may submit individualized or aggregated data. We request commenters to provide the following information in as much detail as possible regarding particular services, including but not limited to PCS, cellular, paging, SMR, satellite, radio, television, wired cable, wireless cable, local exchange, long-distance, access,

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[82](...continued)
[82] CMRS Third Report and Order, 9 FCC Rcd at 8096-8100.

[83] NAACP v. Federal Power Commission, 425 U.S. 662, 670 n.7 (1976) (holding that the Commission's EEO rules were justified to ensure diversity of programming).

[84] Cable Communications Policy Act of 1984, Pub. L. No. 98-549, 1 et seq., 98 Stat. 2779 (1984).

[85] H.R. Rep. No. 934, 98th Cong., 2d Sess. 4723 (1984).

[86] H.R. Rep. No. 102-628, 102d Cong., 2d Sess. 111 (1992).

[87] 1992 Cable Act, 47 U.S.C. § 334.

on-line, messaging, and international services, and resale of any such service, as well as information regarding businesses that provide parts or services to providers of telecommunications services and information services:

(1) ownership structure, including identity of owner(s) by gender and racial group,[88] as well as percentage of minority or female control;

(2) communications service(s) provided;

(3) geographic region(s) served;

(4) primary markets (e.g., businesses, residences, government);

(5) number of employees, job categories (i.e., officials and managers, professionals, technicians, clerical), and employee composition in job categories by race and gender.

(6) capital requirements for entry or expansion;

(7) funding sources and methods of raising capital;

(8) revenue, income and profit levels.

25. To help fulfill our responsibilities under Sections 257 and 309(j), we request comment on the following questions regarding market entry barriers. Comments should be as specific as possible and identify with particularity the types of services and geographic regions covered.

(1) What obstacles do small businesses face in accessing capital and credit?

(2) Do small businesses obtain capital and credit under terms and conditions less favorable than those provided large businesses? If so, why?

(3) What difficulties do small businesses face in their dealings with suppliers, vendors, contractors, or FCC licensees?

(4) What obstacles do small businesses face in their abilities to resell.

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[88] Consistent with the definition of "minority" in our rules, minority identification should be Black, Hispanic, American Indian, Alaskan Native, Asian, or Pacific Islander, as appropriate. See, e.g., 47 C.F.R. §§ 1.1621(b) and 24.720(i). See also Race and Ethnic Standards for Federal Statistics and Administration Reporting, OMB Statistical Policy Directive, No. 15 (1977).

interconnect, or benefit from economies of scale?

(5) Do high deposit requirements deter small business entry into resale?

(6) Do small businesses have difficulty attracting or retaining clients?

(7) Do small businesses have difficulty dealing with trade associations and other private entities?

(8) Do small businesses have particular difficulties in obtaining government contracts, licenses, franchises, or other government benefits? Have small businesses faced any such problems regarding FCC policies or rules?

(9) Do contracts for a single bidder to serve a large volume and diversity of companies through one contract disadvantage small businesses?

(10) Do small businesses encounter difficulties attracting strategic partners?

(11) In forming alliances with other entities, are small businesses required to do so under unfavorable terms and conditions for the small business?

(12) Are there unique obstacles that small businesses face in entering, providing service, or expanding in the telecommunications field that are not faced by small businesses in other sectors (for example, in the retail or service sectors)?

(13) Do small businesses experience difficulties identifying and obtaining access to spectrum?

26. We request comment on how these impediments vary depending on the particular service provided. What particular types of businesses have difficulty getting started, operating, and expanding? Does the cost of capital differ for small broadcast stations versus small wireless providers? Does the cost of capital vary depending on the particular type of wireless (paging, SMR, PCS, etc.) or broadcast (television or radio) service offered? Do any other market entry barriers exist? For what services? Parties should comment on the geographic scope of any identified barrier, i.e., does the barrier exist nationwide, or in particular regions or locales? For any barrier, commenters also should identify whether it is a statutory requirement,[89] government regulation, or external factor, e.g., difficulty obtaining loans.

[89] Section 257 requires that we report to Congress any statutory barriers that the Commission recommends be eliminated. 47 U.S.C. § 257(c).

27. We also request comment on how these difficulties are influenced by size. Are impediments to entry or expansion, or to providing service greater for very small businesses? For example, does the cost of capital increase as the size of a small business decreases? Do very small businesses encounter greater difficulties in dealings with suppliers, vendors, or contractors than larger small businesses?

B. Unique Market Entry Barriers

28. In this section, we seek information to help us identify any unique obstacles that small telecommunications businesses owned by women or minorities encounter in forming firms, providing service, or expanding in the telecommunications market. We explore this area because first, the legislative history of Section 257 suggests Congress was concerned about the underrepresentation of minority and women-owned small businesses in the telecommunications market and sought to increase competition by diversifying ownership.[90] Second, Section 309(j) specifically requires that we further opportunities for businesses owned by women and minorities in the provision of spectrum-based services. Third, based on our licensing information and other statistical data, we know that a portion of small communications businesses are owned by women and minorities and there is evidence that these entities encounter unique market barriers.

29. Evidence demonstrates that a principal barrier is difficulty accessing capital because of minority or female status, rather than race or gender-neutral factors, and that this barrier contributes directly to low participation rates. For example, in the 1992 Small Business Act, Congress found that businesses owned by minorities or women have particular difficulties in obtaining capital.[91] In the Women's Business Ownership Act of 1988,[92] Congress found that women as a group are subject to discrimination that adversely affects their ability to raise or secure capital. In 1993, the National Foundation for Women Business Owners found that women-owned firms are 22% more likely to report difficulties with banks than are businesses at large, and that removal of financial barriers would encourage stronger growth among women-owned businesses, resulting in much greater growth throughout the economy.[93] Further, in a 1992 Report to the President and Congress, the National Women's Business Council cited lack of access to capital as the most pervasive barrier to success for

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[90] See supra note 9 citing 142 Cong. Rec. H1141 at H1176-77 (daily ed. Feb. 1, 1996) (statement of Rep. Collins).

[91] 1992 Small Business Act, §§ 112(4) and 33(a)(4)

[92] Pub. L. No. 100-533 (1988).

[93] "Financing the Business, A Report on Financial Issues from the 1992 Biennial Membership Survey of Women Business Owners." The National Foundation for Women Business Owners (October 1993).

women business owners.[94]

30. As to communications businesses specifically, the American Women in Radio and Television, Inc. asserts that "[b]ased on their gender, women today confront significant barriers in raising the amount of capital necessary to seize the ownership opportunity. This lack of access to capital has contributed directly to the low level of female ownership of mass media facilities."[95] The Commission has recognized that "considerable evidence has been presented showing that the primary impediment to minorities seeking to enter the communications industry or to increase their mass media holdings has been lack of access to capital."[96] In April 1995, the National Telecommunications and Information Administration (NTIA) found that "there are real barriers to minority participation in telecommunications, and that minorities often lack access to the types and amount of capital required to form and expand telecommunications businesses."[97] Congressional testimony regarding minority discrimination in telecommunications shows that controlling for education, work experience, age, gender, and other factors, bank loan dollars per dollar of owner equity investment are 160% higher for white firms ($1.85) than black firms ($1 16).[98]

31. The relatively low representation of women or minority-owned communications businesses also suggests that these types of businesses encounter unique obstacles in entering the telecommunications industry. According to the U.S. Census Bureau, in 1987 women owned and controlled 1.9% (27) of 1,342 commercial television stations and 3.8% (394) of 10,244 commercial radio stations in the United States.[99] In 1994, minorities owned and

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[94] "Annual Report to the President and Congress," National Women's Business Council (1992) at 11.

[95] "Written Remarks of Shelley Spencer on Behalf of American Women in Radio and Television, Inc." for the FCC's En Banc Hearing on Spectrum Policy (comments dated February 20, 1996; hearing held March 5, 1996) at 12.

[96] Minority/Female Mass Media Ownership NPRM, 10 FCC Rcd at 2791.

[97] "Capital Formation and Investment in Minority Business Enterprises in the Telecommunications Industries," (NTIA) (April 1995) at iii.

[98] "Access to Credit and Capital Among Minority-Owned Businesses," testimony of Dr. Timothy Bates, Visiting Fellow, The Woodrow Wilson Center (May 20, 1994) (Bates Testimony) at 1. Dr. Bates also found that minorities are most likely to be foreclosed from capital intensive industries. Id. at 6.

[99] See Comments of American Women in Radio and Television, Inc. in MM Docket No. 94-149 and MM Docket No. 91-140, at 4 n.4 (filed May 17, 1995), citing 1987 Economic Censuses, "Women-Owned Business," WB87-1, U.S. Dep't of Commerce, Bureau (continued...)

controlled 2.7% of the commercial television stations and 2.9% of the commercial radio stations in the United States.[100] According to the Census Bureau, in 1992, Blacks owned 3.5% of the entities characterized generally as communications firms[101] and women owned 31%: and most of these businesses were solely-owned.[102]

32. Finally, the participation level of minority or women-owned businesses in the Commission's spectrum auctions so far suggests that these entities may face unique obstacles.

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[99](...continued) of the Census, August 1990 (based on 1987 Census).

After the 1987 Census report, the Census Bureau did not provide data by particular communications services (four-digit Standard Industrial Classification (SIC) Code), but rather by the general two-digit SIC Code for communications (#48). Consequently, since 1987, the U.S. Census Bureau has not updated data on ownership of broadcast facilities by women, nor does the FCC collect such data. However, we sought comment on whether the Annual Ownership Report Form 323 should be amended to include information on the gender and race of broadcast license owners. Minority/Female Mass Media Ownership NPRM, 10 FCC Rcd at 2797.

[100] "Analysis and Compilation of Minority-Owned Commercial Broadcast Stations in the United States," Department of Commerce, National Telecommunications and Information Administration, The Minority Telecommunications Development Program (MTDP) (September 1994). These percentages are based on reported ownership of 1,155 commercial television stations and 9,973 commercial radio stations. MTDP considers "minority ownership" as ownership of more than 50% of a broadcast corporation's stock, or have voting control in a broadcast partnership." Id. Of the 11,128 combined radio and television stations nationwide, minorities owned 2.9% (323). Id.

[101] "Communications" firms are a subcategory in a larger grouping called "transportation and public utilities."

[102] "1992 Survey of Black-Owned Businesses" United States Department of Commerce, Economics and Statistics Administration, Bureau of the Census ("1992 Black-Owned Businesses"); "1992 Survey of Women-Owned Businesses," United States Department of Commerce, Economics and Statistics Administration, Bureau of the Census (1992 Women-Owned Businesses"). These figures represent firms classified by the Census Bureau as Standard Industrial Classification Code (SIC) #48 and 1,517 Black-owned firms out of 43,666 total communications firms and 13,592 women-owned firms out of 43,665 total communications firms.

Because auctions will continue and various factors influence participation,[103] we are not able to fully assess participation by women and minorities. Figures preliminarily indicate, however, that participation in auctions without bidding incentives for minorities and women is lower than participation in auctions with incentives. For example, in the broadband PCS auction for A and B blocks, which concluded in March 1995, no minority-owned businesses won a broadband PCS license and only one license (for one of the lower-priced markets) was won by a woman-owned business. In the MDS auction, which concluded on March 28, 1996, 7.7% of the eligible bidders claimed woman-owned status; 8.4% of the eligible bidders claimed minority-owned status. Of the 67 winners, 5.9% indicated they were women-owned; 7.5% indicated they were minority-owned.[104] In the 900 MHz SMR auction, which concluded on April 15, 1996, 7.8% of the eligible bidders claimed woman-owned status and 3.9% claimed minority-owned status. Of the 80 successful bidders, 6.3% indicated they were women-owned; 5% indicated they were minority-owned. Statistics for the PCS C block auction, which ended May 6, 1996, were higher, even though no competitive bidding incentives were available for businesses owned by minorities or women:[105] 13.3% of the eligible bidders claimed woman-owned status, 18.0% claimed minority-owned status;[106] and of the 89 successful bidders, 16.9% indicated they were woman-owned; 28.1% indicated they were minority-owned.[107]

33. By comparison, auctions that offered incentives for women and minority-owned businesses yielded higher participation by those entities (both as bidders and winners). For example, in the July 1994 IVDS auction, 22.5% of the registered bidders claimed status as minority-owned, and 33.2% as women-owned; of the auctioned licenses, 23.6% were awarded to bidders claiming minority-owned status, and 38.2% to bidders claiming women-

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[103] Factors that may influence participation include for example, the type of service, presence of incumbents, projected cost of a successful bid, capital requirements for offering service, access to capital, license coverage area, availability of Commission bidding incentives, and the extent of Commission outreach to small minority or women-owned businesses and new entrants.

[104] "Multipoint Distribution Service Questions and Answers," FCC Auctions, Press Information (released March 29, 1996) at 3.

[105] In the Competitive Bidding Sixth Report and Order, the Commission noted that many minority-owned and women-owned applicants prepared to bid in the C Block auction in reliance on race and gender-based incentives. Thus, their rate of participation is likely higher than it would have been in the absence of any pre-auction incentives. See D, E & F Block NPRM at ¶ 27.

[106] Id.

[107] "Distribution of Licenses in PCS C-Block Auction," FCC Auctions, Press Information (released May 6, 1996).